



Government of Western Australia  
Department of Mines, Industry Regulation and Safety



# Construction Contracts Act

Report of the Building Commissioner  
Year to 30 June 2022



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## 1. Purpose of the Act

The *Construction Contracts Act 2004* (the Act) commenced operation on 1 January 2005. The Act provides a means for the rapid adjudication of payment disputed for parties to a contract for the carrying out of construction work and/or supply of related goods and services (a construction contract) on a site in Western Australia (WA).

Rapid adjudication is a dispute resolution process to help resolve disagreements between parties over payments for construction work and/or the supply of related goods and services. It is designed to be quick and reasonably cost effective.

The Act also:

- Prohibits ‘paid-if-paid’ or ‘paid-when-paid’ provisions in construction contracts that inhibit the movement of funds through the contracting chain;
- Implies fair and reasonable payment terms into construction contracts that are not in writing; and
- Clarifies the right to deal with unfixed materials when a party to a construction contract becomes insolvent.

## 2. Purpose of this annual report

The Building Commissioner administers the Act. Under section 52 of the Act, the Building Commissioner is required to present a report to the Minister for Commerce before 1 November in each year detailing the operation and effectiveness of the Act for the immediately preceding financial year (the reporting period).

The report timing enables outcomes of adjudication applications made on or before 30 June to be included in the reporting period.

## 3. Data sources

For the purposes of preparing this annual report, the information was gathered from the following sources:

- Determinations of adjudicators;
- Information provided by prescribed appointors;
- Information provided by adjudicators; and
- The online decisions database of the Supreme Court of Western Australia.

## 4. Executive summary

- The total number of applications for adjudication increased by 10 per cent in 2021-22 when compared to the previous reporting period.
- The residential sector of the industry had the highest frequency of adjudication applications.
- The lowest, highest and mean value of payment dispute values for the reporting period were \$700.00, \$23,788,108.26 and \$1,521,123.00 respectively.
- The highest frequency of adjudicator appointments by a prescribed appointor was 47, by the Resolution Institute.
- The lowest, highest and mean value of adjudication fees were \$511.00, \$57,915.00, \$8,044.93 respectively.
- On 25 June 2021, the new *Building and Construction Industry (Security of Payment) Act 2021* (BCISP Act) received Royal Assent. The legislation will commence operation in three stages, with the first stage having commenced on 1 August 2022.
- It is expected that over time, the volume of adjudications under the CCA will diminish.

## 5. Adjudication activity

Table 1 shows the number and values of applications for adjudication by reporting period.

<b>Financial year</b>	<b>Number of applications</b>	<b>Gross claims value</b>	<b>Mean value of payment dispute</b>
2005-06	29	\$10,485,828.12	\$361,580.28
2006-07	36	\$15,938,123.77	\$422,725.66
2007-08	86	\$98,222,008.65	\$1,142,116.38
2008-09	105	\$35,838,998.23	\$341,323.79
2009-10	172	\$233,266,050.32	\$1,356,197.97
2010-11	197	\$308,553,664.77	\$1,566,262.25
2011-12	178	\$183,701,052.55	\$1,086,988.48
2012-13	208	\$226,300,887.35	\$1,103,906.77
2013-14	175	\$378,903,585.63	\$2,165,163.35
2014-15	235	\$580,655,848.46	\$2,470,875.95
2015-16	225	\$685,990,359.67	\$3,048,846.04
2016-17	176	\$187,563,426.85	\$1,065,699.00
2017-18	165	\$71,942,426.85	\$436,014.71
2018-19	115	\$60,524,242.18	\$526,297.76
2019-20	106	\$83,346,375.80	\$786,286.56
2020-21	70	\$83,473,615.78	\$1,192,480.23
<b>2021-22</b>	<b>77</b>	<b>\$117,126,444.74</b>	<b>\$1,521,122.66</b>
<b>Grand total</b>	<b>2,355</b>	<b>\$3,361,832,537.60</b>	<b>\$1,427,529.74</b>

Table 2 provides statistics on the applications for adjudication by industry sector.

Industry sector	Applications			
	Frequency	% total applications	Total \$ amounts claimed	% value of claims
Residential	25	33	\$1,240,917.95	1
Public building	9	12	\$24,209,483.58	21
Commercial	19	25	\$4,513,284.55	4
Mining/oil and gas	7	9	\$32,398,920.99	28
School/education building	4	5	\$1,499,298.12	1
Civil Works/ infrastructure	0	0	\$0	0
Rural/agricultural	11	14	\$53,259,059.84	45
Mixed use	0	0	\$0	0
Aged Care	0	0	\$5,479.71	0
Unknown	1	1	\$0	0
<b>Total</b>	<b>77</b>	<b>100%</b>	<b>\$117,126,444.74</b>	<b>100%</b>

## 6. Adjudication outcomes

Table 3 shows the number of applications for adjudication that were determined, withdrawn or dismissed.

Number of determinations	44
Number of withdrawals	12
Number of applications dismissed	20
Number of disqualified – conflict of interest	1



## 7. Prescribed appointors

Table 4 provides statistics on the number of adjudicator appointments made.

Name of prescribed appointor	Number of appointments	
	#	%
Adjudicate Today Pty Limited	11	14
Australian Institute of Building	7	9
Australian Institute of Project Management	0	0
Master Builders' Association of Western Australia (Union of Employers) (MBA)	10	13
Resolution Institute	47	61
RICS Australasia Pty Ltd	1	1
The Electrical and Communications Association of Western Australia Inc.	1	1
Self-appointed	0	0
<b>Total</b>	<b>77</b>	<b>100%</b>

Table 5 provides a summary of adjudication fees.

Max published adjudicator fees per hour (excl. GST)	\$700.00
Min published adjudicator fees per hour (excl. GST)	\$100.00
Indicative average hourly fee	\$329.27
Actual adjudication fees (77 applications)	\$619,459.94
Mean	\$8,044.93
Highest fee revenue	\$57,915.00
Lowest fee revenue (>\$0)	\$511.00
Max fee applied for adjudications	\$600.00
Min fee applied for adjudications	\$230.00

## 8. Certification of adjudication determinations

The Building Commissioner certified 8 determinations under section 43(2) of the Act to allow Applicants to recover amounts owed through the courts.

## 9. Judicial review

The Supreme Court is the forum to receive applications for judicial review, such as a challenge to an Adjudicator's determination on the grounds of jurisdictional error.

There were no applications for judicial review during the year.



Kristin Berger

**BUILDING COMMISSIONER**